

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SCOTT JAMES KOCIAN,

Petitioner,

v.

BRAD SCHIMEL,

Respondent.

Case No. 17-CV-1769-JPS

ORDER

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 20, 2017. (Docket #1). Magistrate Judge William E. Duffin, to whom the matter is assigned, screened the petition pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings and directed Petitioner to file an amended petition. (Docket #9). Petitioner did so, (Docket #13), and upon screening the amended petition, Magistrate Duffin determined that one of Petitioner's grounds for relief should be dismissed, (Docket #14). For that reason, the screening order was issued as a report and recommendation to this Court. *See Coleman v. Labor & Indus. Rev. Comm'n of Wis.*, 860 F.3d 461 (7th Cir. 2017).

In his report and recommendation, the magistrate described Petitioner's three asserted grounds for habeas relief. (Docket #14 at 2). Magistrate Duffin concluded that although Petitioner is precluded from raising his asserted Fourth Amendment claim in the instant habeas action, his remaining two claims—one for a due process violation, the other for ineffective assistance of counsel—do not appear to be plainly without merit. *Id.* at 2–5. Consequently, the magistrate recommends that the Fourth

Amendment ground in the amended petition be dismissed and the other grounds be permitted to proceed. *Id.* at 5.

In his recommendation, Magistrate Duffin informed Petitioner that, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b)(2), and General Local Rule 72(c), Petitioner had fourteen days to file an objection to the recommendation. (Docket #14 at 5). That deadline has passed and the Court has received no objection from Petitioner. Having received no objection thereto, and in full agreement with Magistrate Duffin's analysis and conclusions, the Court will adopt the recommendation.

Accordingly,


IT IS ORDERED that Magistrate Judge William E. Duffin's March 8, 2018 Report and Recommendation (Docket #14) be and the same is hereby **ADOPTED**;

IT IS FURTHER ORDERED that Petitioner's ground for relief pursuant to the Fourth Amendment asserted in his amended petition (Docket #13) be and the same is hereby **DISMISSED**; and

IT IS FURTHER ORDERED that Petitioner shall be permitted to proceed on the remaining grounds stated in his amended petition (Docket #13). This case will be **RETURNED** to Magistrate Judge William E. Duffin, who shall order service on Respondent and set a schedule in this matter by separate order.

Dated at Milwaukee, Wisconsin, this 5th day of April, 2018.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge